

Approved: September 12, 2013

Posted: September 20, 2013



Town Council Meeting Minutes

Thursday, August 15, 2013, at 7:00 PM, in the Matthew Thornton Room



Chairman Rothhaus called the meeting of the Town Council to order at 7:00 p.m. Present at the meeting were Vice Chairman Yakuboff, Councilor Boyd, Councilor Dwyer, Councilor Koenig, Councilor Mahon, and Town Manager Eileen Cabanel. Councilor Harrington was excused.

Pledge of Allegiance

Chairman Rothhaus led in the Pledge of Allegiance.

A moment of silence was observed for the passing of Don Hamel, a long-time Town employee, and John Queen, a former police officer for the Town of Merrimack. The Council expressed its deepest sympathy to the families of Mr. Queen and Mr. Hamel.

Announcements

Town offices will be closed Monday, September 2, 2013 in observance of the Labor Day holiday. The next regular meetings of the Town Council will be conducted on Thursday, September 12th, September 26th, October 10th, and October 24th at 7:00 p.m. in the Matthew Thornton Room.

The Merrimack Police Department will be hosting the 2nd annual Sgt. Ed Pane Wiffleball Tournament on August 17th at the American Legion. Sgt. Pane was stricken with ALS two years ago. If interested in playing, sponsoring or watching, the Police Department would love to see you. For more information contact Officer Rick McKenzie at 424-3774. Crimeline will be hosting their annual golf tournament September 11th. If interested in entering a team or being a sponsor please contact Officer Rob Kelleher at 424-3774.

Chairman Rothhaus informed the public and the viewing audience Item #3 under New Business was withdrawn.

Comments from the Press and Public - None

Recognitions, Resignations and Retirements - None

Appointments

1. Annual Review with the Zoning Board of Adjustment

Submitted by Zoning Board Chairman Phil Straight

Per Town of Merrimack Charter Section 6-6, at least annually, there should be an annual review with the Zoning Board of Adjustment. This agenda item is to highlight the board's significant actions, current projects, anticipated actions, and to raise any concerns the Council should know or could act on.

Phil Straight, Chairman, Zoning Board of Adjustment (ZBA) informed the Council since August of 2012, the ZBA has conducted 11 regular meetings and been presented with 85 agenda items and

Approved: September 12, 2013

Posted: September 20, 2013

approximately 35 petitions for variances, special exceptions, use, and appeals of administrative decisions most of which dealt with yard setbacks. He noted the written report provided should be corrected by striking reference to Special Exception Use (R-1) legal settlement 100 as it pertained to a case addressed last year. Of the petitions presented, 30 were granted and 5 denied.

Mr. Straight stated some of the membership is of the opinion that some of the zoning laws are outdated. As an example, the zoning regulations require no separate door for an Accessory Dwelling Unit (ADU) despite newer fire and safety rules suggesting one should be provided for emergencies. There are a good many large lots that were set for septic systems to protect ground water, e.g., certain types of soils call for 100,000 sq. ft. Due to urban sprawl and court decisions, towns are rethinking the larger lot sizes. Today improved septic systems do not require the amount of square footage previously necessary. The size of the lot is based on how permeable the soil type is, and it is now known the old Department of Agriculture soil maps are suspect at best.

Mr. Straight spoke of the need for training and increased communication. He spoke of the shortage of conforming lots, resulting in smaller non-conforming lots, and remarked knowing where to draw the line for approving variances becomes more subjective/difficult each year.

Councilor Boyd expressed his gratitude to the members for the difficult work they do, and spoke of the quality of volunteers who work diligently to stay up-to-date on current zoning issues.

He found it interesting, on the Appeals of Administrative Decisions, the ZBA supported staff decisions 80% of the time. He questioned the instance where the ZBA did not decide with staff and the instance where a petition was denied. Mr. Straight responded typically the ZBA likes to support staff; if ruling against they are making a determination staff has made an incorrect decision. He noted staff typically agrees with the ZBA that some of the older zoning regulations are outdated. If the ZBA approves an appeal it allows staff to okay a similar request in the future based on precedent. The instance where precedent was attempted to be set was on a petition where a foyer was the entrance to an ADU. The old rule required traveling through the living quarters before entering the ADU to make it more likely an ADU would only be constructed for a blood relative. The old rule was overturned resulting in precedent allowing staff to approve such requests in the future.

Fran L'Heureux, Vice Chairman, ZBA, stated the instance in which the petition relative to signage was denied was one where the signage the business currently had was believed sufficient and that which was desired to be erected would have come out away from the building, included arrows in all directions, and the Board believed would further confuse visitors to the site. The suggestion made was to utilize paint on the ground surface to indicate direction. She stated her belief the decision to deny was unanimous.

Councilor Boyd commented remarks made around the need for continued training and open communication are well taken. He noted, after similar comments were made last year, with the assistance of staff, training was provided, and he is hopeful that can continue to be provided. Mr. Straight remarked during the meeting conducted with counsel the membership went through issues relative to process; however, he would like the ability to review court decisions. He added the ZBA had one joint meeting with the Planning Board, which is another effort he would like to see continue. He suggested knowledge could also be gained through continued communication, e.g., e-mails providing updates on recent cases, etc. Ms. L'Heureux stated a desire for the ZBA to identify the topic(s) to be discussed with legal counsel.

Approved: September 12, 2013

Posted: September 20, 2013

Councilor Koenig spoke of the rules of law the ZBA has to abide by, and requested Mr. Straight identify them for the public. Mr. Straight stated the ZBA has to consider; how a request to deviate from a particular law would affect the local community, e.g. ensure not constructing something that will diminish the value of surrounding properties, how a particular deviation would affect the Town, if a request is denied, how large of a hardship is created, and the spirit of the law. There are five points of law that have to be met when considering a request. Failing any one of the criteria requires a denial.

2. Fraser Square Veterans Memorial Monument Update

Submitted by Brian Snell

To update the Town Council on the status of the proposed Fraser Square Veterans Monument.

Mr. Brian Snell stated questions have come up regarding the name of the memorial, and his recommendation is to utilize the name Fraser Square Veterans Memorial. He spoke of confusion that could arise if referred to as a park given there is already a Veterans park. He questioned the opinion of the Council. Councilor Mahon remarked it is not a memorial park, but a memorial at the square. He is unsure how it has been perceived as competing with Veterans Memorial Park. The council has always tried to respect the memory of Mr. Fraser, and there has been no intent to do any other change to the name of the square. Chairman Rothhaus stated his agreement with the name Fraser Square Veterans Memorial.

Mr. Snell spoke of a single tree, which is overgrown, needs to be addressed, and could be removed or trimmed. In its current condition/location, the tree would block the view of the memorial from any southbound traffic on D.W. Highway. When asked, he stated his belief the tree has no particular significance and has never been pruned or maintained. He spoke of another tree, which he wishes to physically move to the back side of the square. When asked if additional trees would be planted, Mr. Snell stated that would be addressed if called for. He has not yet had the opportunity to address the Garden Club to seek their assistance. Councilor Mahon suggested the Forester contracted by the Conservation Commission or a number of Arborists residing in town may be of assistance. Chairman Rothhaus suggested an inquiry be made to ensure the tree was not planted for a specific purpose, which should be acknowledged.

Mr. Snell informed the Council he has had discussions with Paul Micali, Finance Director, regarding the setup of accounts. Checks will be made to the Town of Merrimack with a note in the memo section stating Fraser Square Veterans Memorial. Credit cards will not be accepted due to associated fees. The existing stone honoring Mr. Fraser will remain onsite.

Vice Chairman Yakuboff stated his assumption the architect will incorporate into the rendering delineation of possible trees that would be recommended, and requested the Council be provided with a copy of the rendering when it becomes available. When asked, Mr. Snell stated the memorial would be squared off, which will optimize brick space. The monument itself will be round, but the granite pavers will be in a square pattern as indicated on the original diagram. Mr. Snell spoke of the interest already expressed in fundraising efforts. A groundbreaking date has not yet been set as the desire exists to first have funding in place. The hope is for a spring time groundbreaking.

Councilor Koenig stated a desire to review the final plan and spoke of a concern with the size and placement of the monument. He commented he has received input from townspeople regarding the potential for dating with regard to the use of black granite. Mr. Snell stated black granite to be the

Approved: September 12, 2013

Posted: September 20, 2013

standard. The black granite will allow the emblems, which are bronze and dark brown, to stand out. Only the posts would be constructed in black granite. The floor and the center for the octagon piece will be an off grey.

Vice Chairman Yakuboff questioned whether a motion was necessary for the establishment of the account. Town Manager Cabanel noted funds would have to be accepted, and suggested acceptance could be considered when funds raised reach the \$5,000 mark. Chairman Rothhaus questioned whether it was necessary given the fundraising efforts would be for an identified purpose. Councilor Mahon noted the Statute refers to unanticipated revenues requiring acceptance by the Council. Town Manager Cabanel stated the Council could wait until the end of the fundraising effort; however, she would recommend an amount be identified so that, when reached, acceptance would come before the Council.

Director Micali stated the Council could choose to either conduct a public hearing for the appropriation and expenditure of funds identifying a specific dollar amount that could be raised and appropriated or it could choose to vote to appropriate and expend up to \$4,999, and then increase the appropriation by that amount of unanticipated revenue. He recommended the latter of the two options and that such a vote take place on the same evening as approval of the final plan. It was noted by keeping the threshold below \$5,000 the item would continue to appear on agendas and the project would remain in the public view.

Public Hearing - None

Legislative Updates from State Representatives - None

Town Manager's Report

The Planning Board conditionally adopted the new Master Plan at their meeting on August 6th. The final step of the adoption will be the final formatting and indexing of the final plans by the consultant, VHB. The Community Development staff wishes to thank the many members of the community and the steering committee for their dedication and hard work over the past 3 years to bring this important project to fruition.

The Community Development Department is happy to welcome the new Assistant Planner, Donna Pohli, to Merrimack. Donna started on August 13th, and was selected for the position from a competitive field of 13 candidates. Donna has hit the ground running, and will be making the rounds to the various Boards and Committees to introduce herself in the coming weeks.

Consent Agenda - None

Old Business

1. Merrimack Fall Festival / Merrimack Rocks Update

Submitted by David McCray

To update the Town Council on the Merrimack Fall Festival/Merrimack Rocks including logistics of the team of Clydesdales and beer wagon.

Approved: September 12, 2013

Posted: September 20, 2013

Mr. David McCray commented he had believed he would be before the Council to address a request by Anheuser Busch to allow beer sampling; however, after several meetings with the Liquor Commission, he has been informed a tasting cannot be conducted during a one-day public event.

He informed the Council ESPN New Hampshire and the Monahan Companies will be the presenting sponsor for the event. A few others such as All Basics Stove Shop and Silver Chariot have also come forward. Other commitments have been made and additional sponsors are being sought. All funding necessary to finance the fireworks is in place. He spoke of the positive way in which the event has been received by the community. All necessary arrangements have been finalized for the Clydesdales to participate. They will be hitched at Town Hall (3:30 p.m.), travel down to Watson Park at 4:00 p.m. where they will remain for an hour for photograph opportunities, and then travel back.

Tributes will be conducted for Tim Gibson, Pete Gagnon, the recipient of the Lifetime Achievement Award for Community Service, and, hopefully, Merrimack High State Champions. Mr. McCray commented he is experiencing some difficulty gaining commitments for attendance from past and present champions. If, at a future date, he believes attendance cannot be gained, the decision will be made to forego that tribute.

Mr. McCray stated Dave Shaw as well as Town Hall employees have been instrumental in work on the day's events (approx. 90 commitments to date). The fireworks agreement is about to be signed, the entertainment has been hired, and the excitement level is rising with 900+ members on Facebook.

When asked, Mr. McCray stated the Class C fireworks show put on by Atlas Fireworks will come out of Watson Park. A chalk line will be painted across the field delineating the area not to be crossed during the time the fireworks are being set off. A rain date has been scheduled for the following Saturday. He is of the belief attendance will be in the thousands (approx. 3,000 over the course of four hours). The majority of parking will be at the High School. Parking could also take place at the Commons and Shaws, if needed. Buses will be hired to handle overflow parking.

New Business

1. Merrimack Hazard Mitigation Plan Update

Submitted by Nashua Regional Planning Commission Environmental Engineer Jill Longval

Inform the Town Council about Merrimack's upcoming hazard mitigation plan update and seek input on the formation of a hazard mitigation team to assist with this process.

Ms. Jill Longval stated the Nashua Regional Planning Commission (NRPC) currently has funding from the New Hampshire Department of Environmental Services (NHDES) to update the Town's existing Hazard Mitigation Plan (expires in 2015). Hazard mitigation plans assess natural hazards that could impact the town, identify critical facilities and infrastructure that could be impacted by natural hazards, and prioritize mitigation actions to help protect critical facilities and infrastructure.

The Town's Hazardous Mitigation Plan is required to be updated and re-submitted to FEMA every five (5) years in order for the Town to maintain eligibility for hazard mitigation grants. The first step in the update process is to appoint a primary contact person Ms. Longval could work with and assemble a hazard mitigation team. The hazard mitigation team typically consists of a representative from fire, police, emergency management, public works, and town administration. A series of 3-4 meetings will be conducted over the course of the next few months at the conclusion of which a plan would be drafted

Approved: September 12, 2013

Posted: September 20, 2013

and brought back before the Council. Once the Council is satisfied with the plan it will be submitted to FEMA. FEMA will ensure the plan meets all necessary criteria and issue an approval pending adoption. The plan would then come back before Council for adoption and re-submittal to FEMA after which a formal approval would be granted.

Ms. Longval questioned the will of the Council with regard to who she should work with to begin assembling the hazard mitigation team and how the Council would like to be involved in the update. She commented one of the mechanisms used with other towns was to create a website off of the NRPC's webpage. Any documents produced during the process, meeting agendas, etc. are posted to the website. Chairman Rothhaus stated his desire to see a website established and remarked the Town seems to embrace that kind of idea. Councilor Koenig noted the Town's website could include a link to the website created by the NRPC. Chairman Rothhaus suggested the emergency management team already established for the Town fits the description of the parties looked for to provide representation. The Council was in agreement, and noted coordination should take place through the Town Manager.

Ms. Longval stated the Town currently has a solid Hazard Mitigation Plan; however, since the time the plan was written FEMA has changed slightly the criteria used to evaluate plans. As a result the NRPC has changed the format of the plans. It was noted updates have recently been completed for 6 towns in the region using the new format/outline, which have been positively received by FEMA.

2. Land Donation to the Merrimack Conservation Commission

Submitted by Merrimack Conservation Commission Chairman Tim Tenhave

Merrimack Conservation Commission seeks Town Council approval for a land donation to the Town utilizing up to \$5,000.00 of Conservation funds to cover expenses and fees, pursuant to RSA 36-A:4. Parcel is located at 283 Continental Blvd, Tax Map 2B, Lot 358-1.

Tim Tenhave, Chairman, Merrimack Conservation Commission, provided a PowerPoint Presentation (copy attached). The donation comes from Edna Patterson and her family; a current resident of Nashua and former Merrimack resident. He referred to maps when identifying the area where the land is located and its characteristics. The wetland is vital; provides water recharge into the Town's own systems (wells), but also provides water to the Pennichuck Water system, which serves a good portion of the southern part of the Town. The parcel does remain wet most of the time. There are no structures or features on the parcel. There are no curb cuts.

Mr. Tenhave noted before the Commission can utilize the conservation funds a Public Hearing has to be conducted. This was done on July 15th. No one from the public attended the Public Hearing.

Mr. Tenhave informed the Council he was originally contacted by the Daughter of Edna Patterson, and informed Ms. Patterson "would prefer to see this property preserved in its natural state, or possibly utilized as a park or bird sanctuary in the future, and believes the best way to accomplish this is to donate it to your organization.". Mr. Tenhave spoke of the opportunity he had to visit the property and commented there is a great deal of wildlife once you get away from the road. He is of the belief some great educational opportunities could be provided through ownership of the property. The Commission wishes to utilize the Conservation Fund (#53) to cover the expenses associated with transfer of ownership, e.g., recording fees, attorney fees, a 6-month tax bill (\$13.00), and any other related expenses incurred by the Town. The Commission did not agree to incur any of the donor's legal expenses. The family was provided the opportunity to review the Deed and provide comment. They are

Approved: September 12, 2013

Posted: September 20, 2013

in favor of the Deed as shown in the presentation (attached). It was noted the restrictions placed on the property are similar to those in a number of the Deeds the Town has on the Grater Woods property.

MOTION made by Councilor Mahon and seconded by Councilor Koenig to thank Edna Patterson and her family for the donation and to authorize the approval of the donation of 283 Continental Boulevard, Tax Map Parcel 2B, Lot 358-1 and to authorize the Town Manager to sign all documents on behalf of the Town Council necessary to effectuate the transfer and acceptance of the donation.

ON THE QUESTION

Councilor Mahon commented the Commission was pleased to have been approached with the opportunity. He spoke of a meeting conducted with Pennichuck Water Works last year regarding the fragility of the area in terms of water resources and conservation, and remarked it made perfect sense for the Commission to bring such an opportunity forward to the Council. He added the restrictions added to the Deed will provide additional strength to the preservation of the property.

Councilor Boyd noted the description of the parcel within the Deed differs from the meets and bounds description shown on the Land Donation Agreement as Exhibit A. Exhibit A specifically accepts (when meaning except) 3.39 acres transferred to the State of New Hampshire, which is not reflected in the meets and bounds description on the quick Claim Deed. He requested counsel review the language as it relates to the meets and bounds description so that it accurately reflects what the Commission will be accepting. He congratulated the Commission on moving forward with an opportunity to continue to provide more open space for the community.

MOTION CARRIED 6/0/0

3. Horseshoe Fish and Game Club Food License Fee Waiver

Submitted by Deputy Health Officer Alfred Turner

Town Council to consider the request for a food service license fee waiver for the Horseshoe Fish and Game Club, which is a non-profit corporation. **Withdrawn from agenda.**

4. Donation of Trees for Watson Park

Submitted by Jackie Flood

The Town Council to consider the acceptance of an anonymous donation of two London Plane trees for Watson Park, pursuant to Charter Article 8-15 and RSA 31:95-e. Each tree is valued at \$450.00 and being donated in memory of Harold Watson and Roger Duhamel.

Mr. Chris Christensen, Chairman, Parks & Recreation Committee, stated the Committee has an intended donation of two London Plane trees, a variety that is disease resistant and well suited for the location. The trees are approximately 10-12' tall and will grow to 60'. He remarked one of the difficulties encountered is the digging restriction in the park (cannot dig below 2') and noted the planting requirement for these trees is about 18".

MOTION made by Councilor Yakuboff and seconded by Councilor Dwyer to accept the anonymous donation of two London Plane trees for Watson Park, pursuant to Charter Article 8-15 and RSA 31:95-e at a value of approximately \$900, to be donated in memory of Harold Watson and Roger Duhamel.

ON THE QUESTION

Approved: September 12, 2013

Posted: September 20, 2013

Councilor Yakuboff remarked it is admirable someone would donate the two trees. Councilor Dwyer commented he is pleased to see that a few weeks after acceptance of the Pavilion and a discussion of beautifying the area, members of the public have stepped forward with such a wonderful donation. Councilor Koenig spoke of the visibility of the Pavilion once the trees have grown to their potential and questioned whether the Rotary Club and others involved in the project are comfortable with the plantings.

Ms. Jackie Flood, Parks and Recreation Committee, responded the trees will actually line up more with the driveway, replacing a few of the Maple trees intended for the area, which are now unavailable. She stated her belief the view of the Pavilion won't be obscured and the trees will provide shade for individuals working at events in the area.

Chairman Rothhaus questioned when the plantings would occur and was informed the Public Works Department would coordinate that in the coming weeks. It was suggested yellow police tape could surround the plantings to provide a level of protection, specifically during the time of the Fall Festival when large crowds are anticipated in the area. **MOTION CARRIED** 6/0/0

5. Consideration to Dispose of Tax Deeded Property - 19 Cabot Road

Submitted by Finance Director Paul Micali

The Town Council to consider the disposal of the tax deeded property at 19 Cabot Road (TMP6D/219), pursuant to RSA 80:89.

Director Micali noted the property was taken through Tax Deed in the spring. Proper notice that the Town may wish to sell the property was provided to all parties involved; however, no responses were received. Director Micali met with the auctioneers in July to discuss the possible auction of the property, and was informed an October/November sale would likely be the best time to conduct an auction. He questioned the will of the Council with regard to auctioning the property. The Town would contract with St. Jean Auctioneers who has visited the property and expressed an opinion the Town should receive a fair dollar for the sale.

MOTION made by Councilor Yakuboff and seconded by Councilor Mahon to authorize the disposal of the tax deeded property at 19 Cabot Road, Tax Map Parcel 6D/219 pursuant to RSA 80:89, and authorize the Town Manager to sign any and all appropriate documents. **MOTION CARRIED** 6/0/0

Minutes

Approve the minutes from the following Town Council meetings: July 18, 2013

MOTION made by Councilor Boyd and seconded by Councilor Mahon to approve the minutes of the July 18, 2013 Town Council Meeting as presented.

The following amendments were offered:

Page 9, Line 6; replace "Councilor Koenig" with "Councilor Boyd"

Page 9, Line 41; insert the words "stated that" between the words "Cabanel" and "several"

Approved: September 12, 2013

Posted: September 20, 2013

MOTION CARRIED 5-0-1 *Chairman Rothhaus Abstained*

Comments from the Press - None

Comments from the Public – None

Comments from the Council

Vice Chairman Yakuboff announced his daughter and son-in-law are expecting the birth of his 11th grandchild due to arrive on April 15th.

Councilor Boyd thanked the community for Money Magazine's rating of Merrimack, NH as the 23rd best place in the United States. He remarked this type of honor is indicative of the type of community Merrimack has in terms of economic development, infrastructure, amenities, and the employers that chose Merrimack as a place to reside. This distinction certainly illustrates that Merrimack is a wonderful place to work, live, and raise a family. He spoke of the numerous organizations, individuals, and factors that go into the way of life, which contributed to the ranking.

The annual Strike Back Against Cancer 5K will be held at the High School on September 7th. The event is sponsored by Mrs. Pombrio who lost her daughter to Cancer. Mrs. Pombrio conducts the event not only to strike back against Cancer, but to honor the memory of her Daughter.

Councilor Dwyer noted Merrimack ranked #23 in the country, #1 in New Hampshire, and #11 in New England. Chairman Rothhaus spoke of the article written by David Brooks, and commented although it was nice he thought he should write an article about the rankings of Windham and Merrimack, the fact he took an anonymous comment and made it the primary story bothered him.

MOTION made by Councilor Mahon and seconded by Councilor Boyd to adjourn the meeting.
MOTION CARRIED 6-0-0

The August 15, 2013 meeting of the Town Council was adjourned at 8:42 p.m.

Submitted by Dawn MacMillan